

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UNITED STATES OF AMERICA,
Plaintiff,

v.

Case No. 1:23-CV-00853-DII

GREG ABBOTT, in his capacity as
GOVERNOR OF THE STATE OF TEXAS,
and THE STATE OF TEXAS,
Defendants.

**MOTION OF UNITED STATES REPRESENTATIVES JODEY C.
ARRINGTON, ET AL FOR LEAVE TO FILE AN *AMICI CURIAE*
BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

Pursuant to Local Rules CV-7 Amicus Curiae, twenty members of the United States Congress, respectfully request leave to file the accompanying short amicus curiae brief (Ex. 1) in opposition to the Plaintiff's Motion for Preliminary Injunction. Amici have reached out to the parties in this case. Defendants consent to the filing of this brief. Plaintiff takes no position.

Amici take no position on the ultimate merits of this case. Instead, Amici seek to file a short brief regarding the proper test that this Court should apply when interpreting the Rivers and Harbors Act.

As members of Congress, amici have a strong interest in ensuring that federal administrative agencies are bound by the text of Congressional statutes. This is particularly important when, as here, the statute at issue contains a jurisdictional element tying federal authority to Congressional power under the Commerce Clause.

Moreover, amici represent constituents who live and work adjacent to rivers and streams. These ordinary Americans are also subject to Rivers and Harbors Act—a statute with both civil and criminal penalties. Amici therefore have a strong

interest in ensuring that federal agencies do not adopt an over-broad reading of the statute.

Finally, Amici's counsel, the Texas Public Policy Foundation, has substantial experience litigating the meaning of the term "navigable waters," and the scope of the Commerce Clause. See, e.g., *BST Holdings, L.L.C. v. OSHA*, 17 F.4th 604 (5th Cir. 2021) (Commerce Clause); *Terkel v. CDC*, 521 F. Supp. 3d 662 (E.D. Tex. 2021) (Commerce Clause); *Orchard Hill Bldg. Co. v. United States Army Corps of Eng'rs*, 893 F.3d 1017 (7th Cir. 2018) (navigable water). The attached amicus brief would therefore aid the Court in deciding these important issues.

Because this brief is filed simultaneously with Defendants' response, the brief is timely and neither party will be prejudiced. Amici therefore respectfully request leave to file the attached amicus curiae brief.

Respectfully submitted,

/s/Chance Weldon

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CERTIFICATE OF CONFERENCE

I hereby certify that I have complied with the conference requirement set forth in Local Rule CV-7(g). Counsel for Movants conferred with counsel for Defendants, and they consent to the filing of this brief and Plaintiff takes no position.

/s/Chance Weldon
CHANCE WELDON

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2023, I electronically filed the foregoing with the Clerk of the Court for the U.S. District Court for the Western District of Texas by using the CM/ECF system, which will serve a copy of same on all counsel of record.

/s/Chance Weldon
CHANCE WELDON